IN THE HIGH COURT OF PUNJAB & HARYAN AT CHANDIGARH

R.S.A. No. 3043 of 2000
Date of decision: January 30,2007

The Cantonment Board and another V. Om Parkash

CORAM: HON'BLE MR.JUSTICE VINEY MITTAL

Present: Shri Munishwar Puri,Advocate, for the appellants.
Shri Surinder Garg, Advocate, for the respondent.

Viney Mittal,J.

This order shall dispose of two regular second appeals being R.S.As. No. 3043 and 3044 of 2000. Both the appeals have been filed by the defendants,Cantonment Board, Ferozepur and its Executive Officer and are against the common judgments and decree passed by the two courts below.

Plaintiff, Om Parkash Dhawan, filed a suit for mandatory injunction against defendant-Cantonment Board on the plea that he had joined Cantonment Board as Lower Division Clerk, and later on was promoted as Upper Division Clerk. He retired with effect from December 31,1994. Pension of the plaintiff was released but he was not given gratuity, leave encashment amount and GPF amount. According to the plaintiff, the aforesaid amounts were illegally withheld by the defendants. The plaintiff, thus, sought directions against the defendants to release the aforesaid amount and also claimed interest at the rate of 18% per annum.

This suit was contested by the defendants. The factum of the plaintiff having retired with effect from December 31,1994 was admitted. It was also conceded that plaintiff had been receiving pension and had also received GPF amount but had not been given

gratuity as complete charge of the stores was not handed over by the plaintiff. According to the defendants there was a shortage of articles worth Rs.38685.30. The aforesaid shortage had been admitted by the plaintiff himself. Besides the aforesaid shortage some bogus entries of articles worth Rs.15270/- were also traced. According to the defendants, plaintiff was liable to pay an amount of Rs.38685.30 and, therefore, he was not entitled to the amount of gratuity which had been withheld as per rule 71.

On the basis of the appreciation of evidence led by the parties, the trial court held that defendants have failed to prove that any deficiency in stores had ever been admitted by the plaintiff. Reliance placed by the defendants on Ex.D1 to Ex.D4 was rejected by holding that the aforesaid documents were merely stray papers and, at no point of time, the said deficiency had ever been admitted by the plaintiff. Consequently, the suit filed by the plaintiff was decreed and defendants were directed to release the amount of Rs.38685.30.

To separate appeals were filed before the first appellate Court. One appeal was filed by the defendants. They challenged the judgment and decree of the trial court in decreeing the suit of the plaintiff. A separate appeal was filed by the plaintiff. He claimed that he was entitled to interest on the delayed payment.

The learned first appellate Court reappraised the entire evidence and came to the conclusion that since all the facts given by the plaintiff were admitted with regard to non-release of the gratuity amount and his date of retirement, therefore, it was for the defendants to prove that there was any deficiency in stores and that the aforesaid deficiency had been admitted by the plaintiff. With regard to the documentary evidence, Ex.D1 to Ex.D4, the appellate

Court also held that Ex.D1 was not signed by Om Parkash. Ex.D2 and Ex.D3 were undated and were on loose papers. According to the appellate court by signing the aforesaid documents, the plaintiff, Om Parkash, had no where admitted that amount of the articles was due from him. The appellate Court also held that if at some stage bogus entries were traced by the defendant-Board, it was required to issue notice to the plaintiff to explain the entries and if the reply received from the plaintiff was not found to be satisfactory, then a criminal case could have been got registered. Since the aforesaid procedure had not been followed, therefore, the defence raised by the defendants was also rejected by the appellate Court. With regard to the claim of plaintiff qua interest on delayed payment, the said claim was also upheld by the appellate Court.

In these circumstances, the appeal filed by the defendants was dismissed by the appellate Court. However, the appeal filed by the plaintiff was allowed and he was held entitled to interest at the rate of 18% per annum from the date of his retirement till the date of payment.

It is, in these circumstances, that the defendants are before this court in the present two appeals.

I have heard Shri Munishwar Puri, learned counsel appearing for the defendant-appellants and Shri Surinder Garg, learned counsel appearing for the plaintiff-respondent and with their assistance have also gone through the record of the case.

Shri Munishwar Puri, learned counsel appearing for the defendants has reiterated the defence raised by the defendants before the two courts below. It has been claimed that documents Ex.D1 to Ex.D4 clearly reflected that there was an admission of plaintiff, Om Parkash, and he had admitted the deficiency of

Rs.38685.30 in the stores. Learned counsel has also produced before me the copies of the aforesaid documents for my perusal.

After having perused the aforesaid documents and having given my thoughtful consideration to the contention raised by the learned counsel for the appellants, I do not find any merit in the present appeals.

A perusal of the documents Ex.D1 to Ex.D4 clearly shows that the said documents are some loose sheet of papers. Document Ex.D1 is not even signed by Om Parkash. Ex. D2 and Ex.D3 appeared to have been signed by Om Parkash but are undated and loose sheets. It cannot be taken that mere signatures on the bottom of the aforesaid loose sheets reflect any admission of the plaintiff with regard to the shortage in the stores. The said documents do not advance the case of the defendants, in any manner.

As a matter of fact, the defendants have failed to show that any enquiry into the shortage was ever conducted by them or that any show cause notice was ever issued to the plaintiff. No order of recovery has, at any point of time, been passed. A unilateral decision to withhold the gratuity amount of the plaintiff by the defendants is absolutely without any justification. Thus, the two courts below have rightly rejected the aforesaid defence raised by the defendants.

At this stage, a challenge made by the learned counsel for the appellants to the rate of interest granted by the appellate Court may also be noticed. It has been argued by Shri Munishwar Puri that the rate of interest awarded by the appellate court was excessive.

In my considered view, once the defendants had taken

a totally unreasonable stand and had withheld the amount of gratuity for a long period i.e. with effect from December 31,1994, when the plaintiff had retired, and the aforesaid amount has not been paid even till this day, then the rate of interest awarded by the appellate court, to a helpless retired employee cannot be held to be excessive, in any manner.

No question of law much less any substantial question of law, arises in the present appeals.

In these circumstances, I do not find any merit in the present appeals. The same are dismissed.

January 30,2007 (Viney Mittal)
sks Judge